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INFO RUEHBO/AMEMBASSY BOGOTA 4830
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RUEHCV/AMEMBASSY CARACAS 0519
RUEHGT/AMEMBASSY GUATEMALA 1032
RUEHLP/AMEMBASSY LA PAZ JUL QUITO 1316
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STATE PASS TO USDOL FOR DOL/ILAB KENNETH SWINNERTON AND
DOL/ILAB SUERYUN HAH; DEPARTMENT FOR WHA/PPC MIKE PUCCETTI

E.O. 12958: N/A

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SUBJECT: PERU: DOL REQUEST FOR EMPLOYMENT DISCRIMINATION
INFORMATION

REF: STATE 81932

11. Per reftel, post provides the following information for mandatory US-Peru Free Trade Agreement reporting requirements. The Ministry of Labor and Employment Promotion (MTPE) provided the information cited, although in some cases the data requested was not available. Responses are keyed to reftel.

12. Summary of Legislation Prohibiting Discrimination

Law 26772 (passed April 17, 1997), Law 27270 (modifying Law 26722 and passed May 29, 2000), and Supreme Decree 002-98-TR form the basis of Peruvian laws prohibiting employment discrimination. The laws prohibit employers from using sex, race, religion, political orientation, or native language as criteria for hiring. A worker who suffers employment discrimination in any of these categories can terminate employment and demand compensation independent of other benefits earned. The employer is also subject to a fine. The MTPE sanctions employers who violate anti-discriminatory laws; the Ministry of Education has the responsibility for sanctioning institutions guilty of discrimination involving access to education.

13. Legal instruments prohibiting other aspects of discrimination

Article 6 of Law 26626 prohibits employment discrimination based on a medical condition involving HIV or AIDS. Article 6 establishes that employees suffering from HIV or AIDS have the right to continue working as long as they are capable of performing their jobs; employees discharged because of a diagnosis of HIV or AIDS have the right to be rehired.

Article 31 of Law 27050 makes it illegal for employers to deny employment or bar access to employment for persons with disabilities.

14. Other general laws prohibiting employment discrimination

The following laws contain provisions prohibiting employment discrimination: the Peruvian Constitution; the military justice system; the penal code; University Law 23733 (which bans discrimination in university admissions); and Legislative Decree 267 (which recognizes the rights of

servicemen to hold public office without regard to political, religious, economic, racial, or sexual background).

15. Legal consequences of discrimination

The act of discrimination is defined as a crime in the Peruvian penal code. Article 323 of the code establishes penalties for persons found guilty of discriminating directly or indirectly against individuals or groups and for persons publicly promoting discriminatory acts based on race, religion, sex, age, disability, language background, ethnic or cultural identity.

The law establishes a sentence of not less than two years or more than three years for persons found guilty of employment discrimination.

Article 25 of General Inspection Law 28806 prohibits "work discrimination, direct or indirect, in matters of employment or occupation in the following domains: hiring, discipline, workdays, training, promotion or other work conditions, based on race, color, sex, age, language, religion, political orientation, national identity, social origin, economic, class, union membership, disability, HIV/AIDS, or any other condition."

16. Government strategy to promote equal opportunity

Supreme Directive 009-2005-MIMDES established the National Plan of Equal Opportunity for Women and Men. The plan guarantees equal treatment and equal opportunities in employment for women and seeks to promote the full participation of women in the development of the country.

The plan lists timelines, actions, and entities responsible for accomplishing these goals and defines methods for evaluating the progress of the plan.

In March 2007, the Law of Equal Opportunity for Women and Men, N 28983, was passed, which requires the government of Peru to promote and guarantee equal opportunity between the sexes by adopting temporary measures of affirmative action. The law requires the use of inclusive language by all levels of government in official documents.

17. Judicial institutions responsible for enforcing anti-discrimination statutes

Disputes regarding acts of discrimination in the workplace are normally handled at the regional level, although all levels of the judicial system have the capacity to try cases regarding employment discrimination. Cases involving constitutional rights can be submitted directly to the Constitutional Tribunal.

18. Post has obtained the source documents for the information provided and has forwarded them via expedited delivery to Kenneth Swinnerton; USDOL; 200 Constitution Avenue, NW; Room S-5303; Washington, DC 20210.
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